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FOIA REQUESTED
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Don't Let the CIA Clam Up

Of the many things Congress has done to open government to scrutiny and accountability, probably none has been more important to the public or more resisted by the executive branch than the Freedom of Information Act. Why do presidents and agencies resent the FOIA so much? Is it because they would prefer to file their mistakes, abuses and bad judgments in a drawer marked "Top Secret" and forget about them?

The executive branch seems to be bothered most about the supposed dangers to the operations of secret intelligence services such as the Central Intelligence Agency. Repeatedly, administrations have searched for ways to put the intelligence agencies totally out of reach of the FOIA.

Congress has refused to give in to these special pleadings. FOIA has been too important in rebuilding the American people's faith in their government. The Freedom of Information Act is here to stay, for the intelligence agencies as well as the rest of the executive branch. Information gained through the act on such important events as the Bay of Pigs and the Cuban missile crisis has added immeasurably to public understanding of our government's policies and the role of intelligence.

It is unfortunate that some in the CIA do not seem to grasp how important the FOIA is to public toleration of their agency. Secret services are alien to the basic concepts of our democracy. We accept them because, as the world's preeminent military power, we can't operate without them. We tolerate them because the American people believe there are effective controls protecting our civil liberties.

We have finally begun to restore some confidence in the intelligence agencies following abuses revealed by the Church and Pike committees. The worst thing for the CIA would be to gain a complete exemption from the FOIA. Public trust would quickly fade. Fears of renewed abuses and political manipulation would demand. Pressures would grow on Congress to

legislate even more stringent controls.

Obviously, the CIA cannot give out all its secrets to people making requests for information under FOIA, nor should it. It must protect sensitive information about the identities of sources, methods of gaining intelligence and activities whose existence must not be disclosed for national security reasons. No reasonable person expects such information to be revealed.

But in my judgment it is not true that the FOIA endangers these secrets. The act has broad exemptions for national security information, and the courts have repeatedly upheld CIA denials of FOIA requests on these grounds. FOIA may be imposing some burdens on the CIA, but I am not persuaded that disclosure of sensitive information is one of them.

A new bill has been introduced in the Senate that might offer an acceptable way to alleviate genuine CIA problems while protecting the pub-

lic's right of access to information about national policy. The bill, now before the Select Committee on Intelligence, would exempt the CIA "operational" files on *how* it collects intelligence, while leaving intelligence information going to policymakers open to FOIA search and review.

Good-faith compliance with FOIA requires the agency to undertake a search of operational files, often involving thousands of documents, with the knowledge that virtually nothing will be released. Since these files contain information that could reveal the identities of agents, the techniques of intelligence-gathering and the existence of secret operations, only experienced agency intelligence officers can do this review.

FOIA requests are handled on a first come, first served basis. Futile searches of operational files are causing a long backlog, and the CIA is now taking over two years to respond to FOIA requests. Information relevant to policy decisions

which can be released is being inordinately delayed. Some way needs to be found to improve the CIA's performance under the FOIA.

The Select Committee on Intelligence has held two hearings on this legislation, and is now awaiting responses from the CIA to a number of questions on how it would be applied. The Intelligence Committee could vote as soon as the last week of July, but it would be unwise to act on the bill until the committee has resolved a number of troublesome issues.

Before it grants relief, Congress must make sure that the CIA cannot use the "operational file" label to cover material that has nothing to do with sources and methods and ongoing intelligence activity. No bill should be passed which leads to less information being released than gets out now.

Second, there must be unambiguous and enforceable procedures for discovering information on abuses and improprieties that might be stored away in operational files. FOIA has permitted the public to probe past CIA abuses aimed at American citizens. This type of information cannot be placed off-limits in the future.

And third, the public as well as the CIA has to benefit from any change in the current situation. If it is to be freed from searching and reviewing operational files, the CIA has to make serious commitments to faster, better responses to future requests for information that is accessible under the FOIA.

As a member of the Intelligence Committee, I sympathize with the agency's dislike of diverting highly trained officers to FOIA review, and with its anxiety for the safety of agents. But as a United States senator and a concerned American, I cannot agree to a return to the old days before the FOIA. That would be bad for the American people—and bad for the CIA.

The writer, a Democratic senator from Vermont, is a member of the Intelligence Committee.



By Ross